

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 310 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SAVITABEN K SHAH

Versus

SITABEN D FADIA

Appearance:

MR MI PATEL for Petitioner

MR AS PANDYA for Respondent No. 1

MR ARUN H MEHTA for Respondent No. 2

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 01/07/98

ORAL JUDGEMENT

The appellant and respondent No. 2 are real sisters. Respondent No. 1 happens to be their mother. The appellant has filed civil suit no. 3121 of 1986 for partition of the properties in question. She moved an application Exh. 27-A (27-B) before the learned Judge of the City Civil Court at Ahmedabad for obtaining interim

injunction against the respondents restraining them from transferring or alienating in any manner the properties in question during the pendency of the suit. The learned Chamber Judge rejected the notice of motion and the injunction application with no order as to costs as per the impugned order dated 24th February, 1992. That is how the appeal has been filed before this Court. It might be visualized from the impugned order that the respondent had canvassed the will in their favour. In this connection, it has been observed by the learned Chamber Judge that the appellant had requested the executor to obtain probate of the will and to act according to the last wishes of the deceased predecessor of the parties. To this, Mr. Patel, learned advocate for the appellant takes exception by making a statement that the appellant did not admit the execution of the will and that was the question to be decided in the suit. He however submits that the suit has come up for hearing before the trial Court. Under such circumstances, if so far the immovable properties in question are not transferred, respondent/s might be set at liberty to apply before the trial Court to seek permission to sell or transfer such property, if required. Mr. Mehta, learned advocate appearing for the respondent submits that he has no instruction whether the immovable property/properties are transferred or not. However, he submits that in case the respondent/s want to transfer during the pendency of the suit any of the immovable property/properties, they may move an application before the trial Court seeking permission to sell and/or transfer such property/properties.

2. Hence, having regard to the facts of the case and also the fact that the suit has come up for trial before the trial Court, following order is passed :

3. Respondent/s will be at liberty to move appropriate application/s seeking permission of the trial Court for selling and/or transferring in any other manner the suit property/properties in case, she/they would require to do so and in such an eventuality, the trial Court will decide such application after hearing the parties. In view of these directions, Mr. Patel, learned advocate appearing for the appellant submits that the appeal might be disposed of accordingly. The appeal is accordingly ordered to be disposed of with no order as to costs.

Vyas